

LEGISLATURE OF NEBRASKA
ONE HUNDRED NINTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 349

Introduced by Prokop, 27.

Read first time January 16, 2025

Committee:

1 A BILL FOR AN ACT relating to electricity; to amend section 70-1012.01,
2 Reissue Revised Statutes of Nebraska, and sections 70-1001.01,
3 70-1012, and 70-1015, Revised Statutes Cumulative Supplement, 2024;
4 to define and redefine terms; to change provisions relating to
5 required applications, notices, and filings, exemptions, and
6 violations regarding the construction or acquisition of certain
7 electric energy storage resources by electric suppliers; and to
8 repeal the original sections.
9 Be it enacted by the people of the State of Nebraska,

1 **Section 1.** Section 70-1001.01, Revised Statutes Cumulative
2 Supplement, 2024, is amended to read:

3 70-1001.01 For purposes of sections 70-1001 to 70-1028.02, unless
4 the context otherwise requires:

5 (1) Board means the Nebraska Power Review Board;

6 (2) Commercial electric vehicle charging station means equipment
7 designed to provide electricity for a fee for the charging of an electric
8 vehicle or a plug-in hybrid electric vehicle, including an electric
9 vehicle direct-current charger or a super-fast charger, any successor
10 technology, and all components thereof. Commercial electric vehicle
11 charging station does not include the residence of a person where an
12 electric vehicle or a plug-in hybrid electric vehicle is charged if no
13 customer usage fee is charged;

14 (3) Commercial electric vehicle charging station operator means a
15 person, partnership, corporation, or other business entity or political
16 subdivision that operates a commercial electric vehicle charging station;

17 (4) Direct-current, fast-charging station means a publicly available
18 charging system capable of delivering at least fifty kilowatts of direct-
19 current electrical power to an electric vehicle's rechargeable battery at
20 a voltage of two hundred volts or greater;

21 (5) Direct-current, fast-charging station operator means a person,
22 partnership, corporation, or other business entity that operates a
23 direct-current, fast-charging station open to the public. The term does
24 not include an electric supplier or a political subdivision;

25 (6)(a) Electric energy storage resource means a resource capable of
26 receiving electric energy from the electrical grid, or from a generation
27 source with which it is associated, and storing it for later injection of
28 electric energy into the electrical grid; and

29 (b) Electric energy storage resource does not include devices or
30 equipment intended solely to inject or absorb reactive power, such as
31 capacitors and synchronous condensers, or equipment intended solely to

1 provide power for electric vehicles;

2 (7) ~~(6)~~ Electric supplier or supplier of electricity means any legal
3 entity, public or private, supplying, producing, storing, or distributing
4 electricity within the state for sale at wholesale or retail. Electric
5 supplier does not include a commercial electric vehicle charging station
6 operator that is a private person or privately owned partnership,
7 privately owned corporation, or other privately owned business;

8 (8) ~~(7)~~ Military installation means a military base other than a
9 National Guard base where fixed-wing aircraft or strategic weapon assets
10 are on a permanent or temporary basis assigned, stored, operated from, or
11 otherwise located;

12 (9) ~~(8)~~ Plug-in hybrid electric vehicle has the same meaning as in
13 section 60-345.01;

14 (10) ~~(9)~~ Private electric supplier means an electric supplier
15 producing electricity from a privately developed renewable energy
16 generation facility that is not a public power district, a public power
17 and irrigation district, a municipality, a registered group of
18 municipalities, an electric cooperative, an electric membership
19 association, any other governmental entity, or any combination thereof. A
20 private electric supplier is limited to the development of those
21 facilities as provided in subdivision (11) ~~(10)~~ of this section;

22 (11) ~~(10)~~ Privately developed renewable energy generation facility
23 means and is limited to a facility that (a) is an electric energy storage
24 resource or generates electricity using solar, wind, geothermal, biomass,
25 landfill gas, or biogas, including all electrically connected equipment
26 and electric energy storage resources used to produce, collect, and store
27 the facility output up to and including the transformer that steps up the
28 voltage to sixty thousand volts or greater, and including supporting
29 structures, buildings, and roads, unless otherwise agreed to in a joint
30 transmission development agreement, (b) is developed, constructed, and
31 owned, in whole or in part, by one or more private electric suppliers,

1 and (c) is not wholly owned by a public power district, a public power
2 and irrigation district, a municipality, a registered group of
3 municipalities, an electric cooperative, an electric membership
4 association, any other governmental entity, or any combination thereof;

5 (12) ~~(11)~~ Regional transmission organization means an entity
6 independent from those entities generating or marketing electricity at
7 wholesale or retail, which has operational control over the electric
8 transmission lines in a designated geographic area in order to reduce
9 constraints in the flow of electricity and ensure that all power
10 suppliers have open access to transmission lines for the transmission of
11 electricity;

12 (13) ~~(12)~~ Reliable or reliability means the ability of an electric
13 supplier to supply the aggregate electric power and energy requirements
14 of its electricity consumers in Nebraska at all times under normal
15 operating conditions, taking into account scheduled and unscheduled
16 outages, including sudden disturbances or unanticipated loss of system
17 components that are to be reasonably expected for any electric utility
18 following prudent utility practices, recognizing certain weather
19 conditions and other contingencies may cause outages at the distribution,
20 transmission, and generation level;

21 (14) ~~(13)~~ Representative organization means an organization
22 designated by the board and organized for the purpose of providing joint
23 planning and encouraging maximum cooperation and coordination among
24 electric suppliers. Such organization shall represent electric suppliers
25 owning a combined electric generation plant accredited capacity of at
26 least ninety percent of the total electric generation plant accredited
27 capacity constructed and in operation within the state;

28 (15) ~~(14)~~ State means the State of Nebraska; and

29 (16) ~~(15)~~ Unbundled retail rates means the separation of utility
30 bills into the individual price components for which an electric supplier
31 charges its retail customers, including, but not limited to, the separate

1 charges for the generation, transmission, and distribution of
2 electricity.

3 **Sec. 2.** Section 70-1012, Revised Statutes Cumulative Supplement,
4 2024, is amended to read:

5 70-1012 (1) Before any electric generation facilities, any electric
6 energy storage resources, or any transmission lines or related facilities
7 carrying more than seven hundred volts are constructed or acquired by any
8 supplier, an application, filed with the board and containing such
9 information as the board shall prescribe, shall be approved by the board,
10 except that such approval shall not be required (a) for the construction
11 or acquisition of a transmission line extension or related facilities
12 within a supplier's own service area or for the construction or
13 acquisition of a line not exceeding one-half mile outside its own service
14 area when all owners of electric lines located within one-half mile of
15 the extension consent thereto in writing and such consents are filed with
16 the board, (b) for any generation facility when the board finds that (i)
17 such facility is being constructed or acquired to replace a generating
18 plant owned by an individual municipality or registered group of
19 municipalities with a capacity not greater than that of the plant being
20 replaced, (ii) such facility will generate less than twenty-five thousand
21 kilowatts of electric energy at rated capacity, and (iii) the applicant
22 will not use the plant or transmission capacity to supply wholesale power
23 to customers outside the applicant's existing retail service area or
24 chartered territory, (c) for acquisition of transmission lines or related
25 facilities, within the state, carrying one hundred fifteen thousand volts
26 or less, if the current owner of the transmission lines or related
27 facilities notifies the board of the lines or facilities involved in the
28 transaction and the parties to the transaction, or (d) for the
29 construction of a qualified facility as defined in section 70-2002.

30 (2)(a) Before any electric supplier commences construction of or
31 acquires an electric generation facility or electric energy storage

1 resource or transmission lines or related facilities carrying more than
2 seven hundred volts that will be located within a ten-mile radius of a
3 military installation, the owner of such proposed facility, resource,
4 transmission lines, or related facilities shall provide written notice
5 certifying to the board that such facility, resource, or facilities
6 contain no materials, electronics, or other components manufactured by
7 any foreign government or foreign nongovernment person determined to be a
8 foreign adversary pursuant to 15 C.F.R. 7.4.

9 (b) Any electric supplier supplying, producing, storing, or
10 distributing electricity within the state for sale at retail is exempt
11 from subdivision (a) of this subsection if it is in compliance with the
12 critical infrastructure protection requirements issued by the North
13 American Electric Reliability Corporation. To receive such exemption, the
14 electric supplier shall submit written notice to the board certifying
15 that it is in such compliance. The electric supplier shall also submit
16 written notice to the board at any time such supplier is no longer in
17 such compliance.

18 (3) A privately developed renewable energy generation facility is
19 exempt from this section if it complies with section 70-1014.02.

20 **Sec. 3.** Section 70-1012.01, Reissue Revised Statutes of Nebraska, is
21 amended to read:

22 70-1012.01 (1) If a supplier terminates construction or acquisition
23 of electric generation or transmission facilities or electric energy
24 storage resources after receiving approval for the facilities or
25 resources from the board, the supplier shall file with the board, within
26 thirty days after the action taken to terminate construction or
27 acquisition, a statement of the factors or reasons relied upon by the
28 supplier in taking such action. Within ten days after receipt of such a
29 filing, the board shall give notice of the filing to such other suppliers
30 as it deems interested or affected by such action and it shall hold a
31 hearing for the purpose of obtaining such additional information as the

1 board deems advisable or necessary to inform other suppliers and the
2 public of the reasons for such termination. Notice of any such hearing
3 shall be given to those suppliers previously given notice of the filing
4 and to any other parties expressing interest in the approved application.

5 (2) The board shall not have authority to approve or deny the action
6 of a supplier terminating construction or acquisition, and any such
7 filing or hearing shall be advisory and solely for the purpose of
8 informing the board, other suppliers, interested parties, and the
9 ratepayers of this state of the factors or reasons relied upon in taking
10 action to terminate construction or acquisition.

11 (3) Nothing in this section shall constitute or be construed as a
12 defense to any cause of action, including a claim for breach of contract,
13 resulting from such termination.

14 (4) A privately developed renewable energy generation facility is
15 exempt from this section if it complies with section 70-1014.02.

16 **Sec. 4.** Section 70-1015, Revised Statutes Cumulative Supplement,
17 2024, is amended to read:

18 70-1015 (1) If any supplier violates Chapter 70, article 10, by
19 either (a) commencing the construction or finalizing or attempting to
20 finalize the acquisition of any generation facilities, any electric
21 energy storage resources, any transmission lines, or any related
22 facilities without first providing notice or obtaining board approval,
23 whichever is required, or (b) serving or attempting to serve at retail
24 any customers located in Nebraska or any wholesale customers in violation
25 of section 70-1002.02, such construction, acquisition, or service of such
26 customers shall be enjoined in an action brought in the name of the State
27 of Nebraska until such supplier has complied with Chapter 70, article 10.

28 (2) If the executive director of the board determines that a private
29 electric supplier commenced construction of a privately developed
30 renewable energy generation facility less than thirty days prior to
31 providing the notice required in subdivision (2)(a) of section

1 70-1014.02, the executive director shall send notice via certified mail
2 to the private electric supplier, informing it of the determination that
3 the private electric supplier is in violation of such subdivision and is
4 subject to a fine in the amount of five hundred dollars. The private
5 electric supplier shall have twenty days from the date on which the
6 notice is received in which to submit the notice described in such
7 subdivision and to pay the fine. Within ten days after the private
8 electric supplier submits a notice compliant with subsection (2) of
9 section 70-1014.02 and payment of the fine, the executive director of the
10 board shall issue the written acknowledgment described in subsection (3)
11 of section 70-1014.02. If the private electric supplier fails to submit a
12 notice compliant with subsection (2) of section 70-1014.02 and pay the
13 fine within twenty days after the date on which the private electric
14 supplier receives the notice from the executive director of the board,
15 the private electric supplier shall immediately cease construction or
16 operation of the privately developed renewable energy generation
17 facility.

18 (3) If the private electric supplier disputes that construction was
19 commenced less than thirty days prior to submitting the written notice
20 required by subdivision (2)(a) of section 70-1014.02, the private
21 electric supplier may request a hearing before the board. Such request
22 shall be submitted within twenty days after the private electric supplier
23 receives the notice sent by the executive director pursuant to subsection
24 (2) of this section. If the private electric supplier does not accept the
25 certified mail sent pursuant to such subsection, the executive director
26 shall send a second notice to the private electric supplier by first-
27 class United States mail. The private electric supplier may submit a
28 request for hearing within twenty days after the date on which the second
29 notice was mailed.

30 (4) Upon receipt of a request for hearing, the board shall set a
31 hearing date. Such hearing shall be held within sixty days after such

1 receipt. The board shall provide to the private electric supplier written
2 notice of the hearing at least twenty days prior to the date of the
3 hearing. The board or its hearing officer may grant continuances upon
4 good cause shown or upon the request of the private electric supplier.
5 Timely filing of a request for hearing by a private electric supplier
6 shall stay any further enforcement under this section until the board
7 issues an order pursuant to subsection (5) of this section or the request
8 for hearing is withdrawn.

9 (5) The board shall issue a written decision within sixty days after
10 conclusion of the hearing. All costs of the hearing shall be paid by the
11 private electric supplier if (a) the board determines that the private
12 electric supplier commenced construction of the privately developed
13 renewable energy generation facility less than thirty days prior to
14 submitting the written notice required pursuant to subsection (2) of
15 section 70-1014.02 or (b) the private electric supplier withdraws its
16 request for hearing prior to the board issuing its decision.

17 (6) A private electric supplier which the board finds to be in
18 violation of the requirements of subsection (2) of section 70-1014.02
19 shall either (a) pay the fine described in this section and submit a
20 notice compliant with subsection (2) of section 70-1014.02 or (b)
21 immediately cease construction or operation of the privately developed
22 renewable energy generation facility.

23 **Sec. 5.** Original section 70-1012.01, Reissue Revised Statutes of
24 Nebraska, and sections 70-1001.01, 70-1012, and 70-1015, Revised Statutes
25 Cumulative Supplement, 2024, are repealed.